

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**April 12, 2004**

**IN RE:**

**PETITION FOR ARBITRATION OF CELLCO PARTNERSHIP  
D/B/A VERIZON WIRELESS**

**DOCKET NO.  
03-00585**

**PETITION FOR ARBITRATION OF BELL SOUTH MOBILITY  
LLC; BELL SOUTH PERSONAL COMMUNICATIONS, LLC;  
CHATTANOOGA MSA LIMITED PARTNERSHIP;  
COLLECTIVELY D/B/A CINGULAR WIRELESS**

**PETITION FOR ARBITRATION OF AT&T WIRELESS PCS, LLC  
D/B/A AT&T WIRELESS**

**PETITION FOR ARBITRATION OF T-MOBILE USA, INC.**

**PETITION FOR ARBITRATION OF SPRINT SPECTRUM L.P.  
D/B/A SPRINT PCS**

---

**ORDER DENYING MOTION**

---

This matter is before the Pre-Arbitration Officer pursuant to the *Preliminary Motion of the Rural Coalition of Small LECs and Cooperatives* ["Coalition"]<sup>1</sup> to Dismiss or, in the Alternative, Add an Indispensable Party ("Motion") filed with the Tennessee Regulatory Authority ("TRA") on March 4, 2004. A response to the Motion was filed by the Commercial Mobile Radio Services ("CMRS") providers and by BellSouth Telecommunications, Inc. ("BellSouth") on March 12, 2004. For the reasons specified below, this Motion is hereby denied.

---

<sup>1</sup> Ardmore Telephone Company, Inc., Ben Lomand Rural Telephone Cooperative, Inc., Bledsoe Telephone Cooperative, CenturyTel of Adamsville, Inc.; CenturyTel of Claiborne, Inc., CenturyTel of Ooltewah-Collegedale, Inc., Concord Telephone Exchange, Inc.; Crockett Telephone Company, Inc., DeKalb Telephone Cooperative, Inc., Highland Telephone Cooperative, Inc.; Humphreys County Telephone Company, Loretto Telephone Company, Inc., Millington Telephone Company; North Central Telephone Cooperative, Inc.; Peoples Telephone Company, Tellico Telephone Company, Tennessee Telephone Company, Twin Lakes Telephone Cooperative Corporation; United Telephone Company, West Tennessee Telephone Company, Inc.; and Yorkville Telephone Cooperative

## **Background**

For some time, BellSouth has been compensating the members of the Coalition for traffic exchanged via BellSouth facilities between Coalition members and the CMRS providers. In the context of renegotiating toll settlement payments between BellSouth and the members of the Coalition in TRA Docket No. 00-00523, BellSouth declared that it would no longer continue this compensation arrangement and suggested that some other reciprocal compensation mechanism be negotiated directly between the Coalition members and the CMRS providers. Pursuant to this declaration, the Pre-Hearing Officer in Docket No. 00-00523 ordered that the CMRS providers be notified of the opportunity to negotiate with the Coalition regarding this matter.<sup>2</sup> Each of the CMRS providers included in this arbitration filed a bona fide request to begin negotiations for interconnection and reciprocal compensation with the members of the Coalition on May 29, 2003.<sup>3</sup> On November 6, 2003, the CMRS providers filed with the TRA petitions for arbitration of these interconnection and reciprocal compensation agreements.<sup>4</sup>

## **Position of the Coalition**

In reference to the request to dismiss the petitions for arbitration, the Coalition suggests that the interconnection terms and conditions sought by the CMRS providers are required by neither 47 U.S.C. § 251 nor the related regulations of the Federal Communications Commission ("FCC"). Although the TRA is authorized by 47 U.S.C. § 252 to arbitrate any open issues

---

<sup>2</sup> *In re Universal Service for Rural Areas - The Generic Docket*, Docket No. 00-00523, *Order Granting Conditional Stay, Continuing Abeyance, And Granting Interventions* (May 5, 2003).

<sup>3</sup> See *In re Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless*, Docket No. 03-00585, p. 5, *In re Petition for Arbitration of BellSouth Mobility LLC, BellSouth Personal Communications, LLC, Chattanooga MSA Limited Partnership, Collectively d/b/a Cingular Wireless*, Docket No. 03-00586, p. 5, *In re Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless*, Docket No. 03-00587, p. 5; *In re Petition for Arbitration of T-Mobile USA, Inc.*, Docket No. 03-00588, p. 4; *In re Petition for Arbitration of Sprint Spectrum LP d/b/a Sprint PCS*, Docket No. 03-00589, p. 7.

<sup>4</sup> The petitions were filed in the five dockets specified in the footnote directly above and were ultimately consolidated into Docket No. 03-00585 by order of the respective voting panel for each docket.

according to the requirements of 47 U.S.C. § 251, the Coalition claims that the TRA has no authority to determine interconnection policies or standards not already expressly established by 47 U.S.C. § 251. Therefore, arbitration pursuant to 47 U.S.C. § 252 is not appropriate since there are no established standards governing the indirect interconnection being sought by the CMRS providers, *i.e.*, delivering traffic over a common truck group and alleviating BellSouth from all financial responsibility for the termination service. The Coalition also maintains that nothing in 47 U.S.C. § 251 permits the CMRS providers to mandate terms of an interconnection that are contrary to the wishes of the Coalition members, specifically the use of “meet point billing.”

With respect to the request to join BellSouth as an indispensable party, the Coalition contends that, even though arbitration is not appropriate under these circumstances, the TRA may properly resolve the outstanding issues in this Docket, but not without BellSouth’s involvement because the CMRS providers have chosen to interconnect indirectly with the members of the Coalition via the BellSouth network; without BellSouth, the Coalition members may not otherwise be able to determine the amount of traffic being terminated by each carrier; and BellSouth’s involvement provides a measure of financial protection against defaulting providers. For these reasons, the Coalition maintains that BellSouth is a necessary and indispensable party to the negotiation of an interconnection agreement pursuant to the standards of Tenn. R. Civ. Proc. 19.01. In support of this contention, the Coalition argues that the resulting three-way interconnection agreements would be consistent with the existing agreements between BellSouth and the CMRS providers taken together with the separate agreements between BellSouth and the Coalition members.

### **Position of the CMRS Providers**

According to the CMRS Providers, arbitration before the TRA of all outstanding issues in this Docket is consistent with federal law and TRA precedent as well as the prior agreement and/or understanding of the Parties. The CMRS providers assert that the TRA has previously represented arbitration as an appropriate mechanism under 47 U.S.C. §§ 251 and 252 to establish interconnection between the CMRS providers and the Coalition. The CMRS providers also assert that they have been diligently adhering to the procedures for arbitration outlined in Sections 251 and 252 and that the Coalition members have so far participated in this process and have explicitly agreed to arbitration should informal negotiations prove to be unproductive.

Moreover, the CMRS providers disagree that federal law places any type of restriction on the types of issues that may and/or should be resolved by the TRA through arbitration and contend that the federal statutes were designed to address exactly the type of interconnection issues presented to the TRA for arbitration in this Docket. The CMRS providers claim that the issues to be resolved have arisen almost entirely out of the federal Telecommunications Act and its associated regulations and, even to the extent that any issues are based on state law, the TRA has the authority to address them all in the context of this arbitration. The CMRS providers specifically maintain the authority of the TRA to determine the obligation of the Parties to interconnect, whether directly or indirectly.

For purposes of establishing interconnection agreements with the Coalition members, the CMRS providers assert that the involvement of BellSouth is unnecessary. Although traffic is being exchanged over BellSouth facilities, the CMRS providers insist that appropriate compensation rates for this traffic can be determined without making BellSouth a party to the interconnection agreement. The CMRS providers contend that federal law does not allow for the

negotiation of a three-way interconnection agreement and that, to the extent input is needed from BellSouth, they have already agreed to cooperate.

### **Position of BellSouth**

BellSouth objects to the efforts of the Coalition to force BellSouth to participate in this arbitration as a party. BellSouth disagrees that the subject of the arbitration is “three way indirect interconnection agreements” and asserts that federal law limits arbitrations to two parties and that the TRA has previously found that arbitration is limited to the two parties seeking to interconnect, in this case, the CMRS providers with the Coalition members. Moreover, BellSouth states that it and the CMRS providers have both refused to negotiate a three-way interconnection agreement and that there is no legal precedent supporting such an agreement or the Coalition’s efforts to compel BellSouth’s participation. BellSouth also denies that it is a necessary party to this arbitration. In support of its position, BellSouth contends that incumbent local exchange companies (ILECs) serving rural areas via BellSouth facilities have previously entered into interconnection agreements with CMRS providers without any involvement from BellSouth.

On a different but related note, BellSouth maintains that traffic which is the subject of the instant arbitration is not governed by the existing Primary Carrier Plan (“PCP”) agreements between BellSouth and the Coalition members. BellSouth also claims that the dispute regarding these PCP agreements need not be resolved in the context of this arbitration but should be resolved in the Docket in which the issue was initially raised and is currently pending.

BellSouth also asserts that the petitions for arbitration are proper and should not be dismissed. BellSouth suggests that the present protests of the Coalition are inconsistent with its prior commitment to negotiate interconnection agreements and its prior representations that it

would be willing to engage in arbitration with the CMRS providers if necessary. Because of these representations and the reliance thereon of the CMRS providers, BellSouth contends that the Coalition should no longer be permitted to object to or further delay the arbitration.

### **Findings and Conclusions**

Pursuant to 47 U.S.C. § 251(a)(1), the members of the Coalition, as well as the CMRS providers, are required to interconnect, either directly or indirectly, with all other telecommunications carriers. As local exchange carriers, the Coalition members are also obligated to establish reciprocal compensation arrangements for both the transport and termination of telecommunications traffic.<sup>5</sup> To accomplish these goals, the Coalition members must, as ILECs, negotiate in good faith in accordance with the requirements of 47 U.S.C. § 252.<sup>6</sup>

In addition to the ILEC, the duty to negotiate in good faith is also imposed upon the telecommunications carrier requesting the arrangement for transport and/or termination of traffic.<sup>7</sup> Voluntary negotiations between an ILEC and a requesting carrier or carriers is also provided for in 47 U.S.C. § 252(a)(1). As represented by both the CMRS providers and BellSouth, there is no provision in federal law for including any additional parties in the negotiation process. Because arbitration is simply an extension of voluntary negotiations, there is, likewise, no allowance made in federal law for participation in arbitration of any party other than the ILEC and requesting carrier(s).

Pursuant to these standards and requirements, the request of the Coalition for joinder of BellSouth and/or dismissal of the petitions for arbitration must be denied.

---

<sup>5</sup> 47 U.S.C. § 251(b)(5)

<sup>6</sup> 47 U.S.C. § 251(c)(1)

<sup>7</sup> 47 U.S.C. § 251(c)(1)

## Joinder

TRA Rule 1220-1-2-.22(2) does allow for the joinder of parties as requested in the Coalition's *Motion*. The standard for joinder is articulated in Tenn. R. Civ. Proc. 19.01 which reads as follows:

A person who is subject to the jurisdiction of the court shall be joined as a party if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest, or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party.

Essentially, joinder requires a finding that the party is necessary or indispensable to a resolution of the matter at hand.<sup>8</sup> Based on this standard, the Coalition has not adequately supported its request to join BellSouth as a party to this arbitration.

Based upon the bona fide requests to negotiate interconnection and reciprocal compensation agreements, the members of the Coalition are obligated to interconnect with each CMRS provider, whether directly or indirectly, and to establish with each CMRS provider an arrangement for reciprocal compensation for the exchange of telecommunications traffic between a Coalition member and a CMRS provider. Whether the exchange of traffic between two such carriers is direct or indirect via the BellSouth network, explicit in federal law is the duty of each Coalition member to each CMRS provider, as the requesting carrier, to arrange for reciprocal compensation. To this end, federal law imposes no compensation obligations on any third party, including BellSouth over whose network the traffic is being exchanged. Notwithstanding any agreement between BellSouth and the other carriers for the use of the

---

<sup>8</sup> See *Horton v Tennessee Dept of Correction*, 2002 WL 31126656, at \*4, n.4 (Tenn Ct. App 2002)

BellSouth network, each Coalition member must still provide for the exchange of traffic with each CMRS provider. For this specific purpose, BellSouth is an unnecessary third party and need not be joined in this particular arbitration.

While it is clear that the Coalition would prefer that BellSouth be a party to the arbitration and the resulting interconnection agreements, this preference does not make BellSouth necessary and indispensable. As discussed above, complete relief is still available among the Parties in the absence of BellSouth. Not only is the necessary relief available, it is also mandated by federal law.

Moreover, even if joinder were warranted under state law, there is still no provision in federal law to allow for the three-way arbitration and interconnection agreements proposed by the Coalition, especially when the other two intended parties object to such an arrangement, and when such an arrangement has, in fact, been previously prohibited by the TRA.<sup>9</sup> Further, there is no provision in federal law whereby the participation of these unwilling parties could be compelled. It is also counterintuitive that the Coalition would seek to impose upon these two unwilling parties a three-way agreement that is without support in federal law while objecting to the two-way agreement that is actually required.

### **Dismissal**

TRA Rule 1220-1-2-.03(2)(f) allows for dismissal of a complaint or petition for "failure to join an indispensable party." Because BellSouth is not a necessary and indispensable party to this arbitration as contemplated by Tenn. R. Civ. Proc. 19.01, the Coalition's request to dismiss the arbitration petitions on this basis must be denied as a matter of course.

---

<sup>9</sup> See *In re The Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc and BellSouth Telecommunications, Inc Pursuant to 47 U.S.C. Section 252*, Docket No 96-01152, *Order Denying the Petition of the Consumer Advocate Division to Intervene* (September 11, 1996)



Furthermore, the arbitration must continue pursuant to the requirements of federal law. As discussed above, the Coalition members are required to interconnect with the CMRS providers, directly or indirectly, and to make arrangements for reciprocal compensation. It is precisely this relief that the CMRS providers are seeking. To this end, the Parties are required to negotiate in good faith and, should these efforts be unproductive, to file for arbitration with the TRA. Upon receipt of a proper petition for arbitration, the TRA is required to resolve all issues presented to it for consideration in the petition.<sup>10</sup> Because the CMRS providers have followed exactly the procedure for negotiation and arbitration as outlined in 47 U.S.C. §§ 251 and 252, and the Coalition had, prior to the filing of this Motion, agreed to participate in this process, there is no basis on which to dismiss these petitions. This conclusion does not change by recharacterizing the request of the CMRS providers for interconnection as a three-way arrangement that does not fit the relief contemplated by federal law.

**IT IS THEREFORE ORDERED THAT:**

*The Preliminary Motion of the Rural Coalition of Small LECs and Cooperatives to Dismiss or, in the Alternative, Add an Indispensable Party is hereby denied.*



---

Kim Beals, Counsel  
as Pre-Arbitration Officer

---

<sup>10</sup> 47 U.S.C. § 252(b)(4)(C)